

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Application

of

PALL CORPORATION

Hearing Case No. 6439

for revision or refund of franchise
tax under Article 9-A of the Tax Law
for the fiscal year ended July 31,
1964.

The tax was recomputed on September 2, 1966 as follows:

Entire Net Income	\$1,352,699.00
Revised business allocation	79.754%
New York base	1,078,831.56
Tax at 5½%	59,335.74
Plus subsidiary capital tax	1,976.65
Total Tax	61,312.39
Tax per report	47,254.08
Deficiency	\$ 14,058.31

The receipts factor was adjusted to include management fees of \$896,338 and allocate it 100% to New York. Also, gross receipts of \$3,534,898 from capital gains were eliminated from the factor.

A timely application for revision or refund was filed on October 5, 1967.

An informal hearing was held in New York City on October 15, 1968 before William F. Sullivan, Hearing Officer, with the taxpayer being represented by Murray Relis, assistant secretary, Samuel B. Nimberger and Albert H. Horowitz, CPA's of Jonick, Robbins, Greene & Sosnoff, 521 Fifth Avenue, New York, N.Y.

The testimony and other information in the file indicates the following:

The taxpayer was incorporated in 1946 to sell and produce metal filters using a fabrication developed by Dr. Pall, its founder. This business is conducted in Glen Cove, N.Y.

In November, 1962, the taxpayer started to build a factory in Mountaintop, Pennsylvania, for the manufacture of fibreglass products. The taxpayer designed the equipment and had six employees in Mountaintop to supervise subcontracting labor in the construction and installation of the equipment. The plant was rented to Fibrous Glass Products, Inc., a 100% owned subsidiary of the taxpayer who manufactured the fibreglass products.

After production was started in late 1963 or 1964, the taxpayer discovered that due to competition the subsidiary would not make much profit in the business.

On July 1, 1964 the land and building, machinery and equipment, and Fibrous Glass technology were sold to an unrelated entity, Certain-
teed Fiberglass Products Corporation, for a gross sales price of

\$3,534,898. The capital gain on the sale was \$1,233,102, of which \$1,082,490 was attributed to gain on sale of Fibrous Glass technology.

The taxpayer claims the management service or management charge was actually an allocation of certain expenses and was paid by it as a matter of convenience for its subsidiaries. The expenses included interest on funded current debt, audit fees, legal fees, patent attorneys' fees, stockholder relation expenses, advertising and marketing expenses and executive salaries.

As noted above, the substantial part of the capital gain was realized from the sale of an intangible in connection with the sale of the plant in Pennsylvania. This gain for Pennsylvania tax purposes was apportioned under their three-factor formula.

Based on the foregoing, we recommend that the receipts factor be adjusted to include the whole capital gain of \$1,233,102 and to exclude the management fee of \$896,338 as not constituting a business receipt under the statute.

The corrected tax is as follows:

Entire net income	\$1,352,699.00
2nd. Revised business allocation	67.974%
New York base	919,483.62
Tax at 5 1/2%	50,571.60
Plus subsidiary capital tax	1,976.65
Total tax	52,548.25

/s/

W. E. Sullivan
Chairman

/s/

J. J. Genevich

WFS:MB
2/21/69

Approved
E. A. Doran

Approved
Milton Koerner, Commissioner 3/11/69

Approved
A. Bruce Manley 3/11/69

O. K. J.H.M. 3/12/69